CCM Chemicals Sdn Bhd v Urethane Technologies Sdn Bhd

HIGH COURT (KUALA LUMPUR) — WINDING UP NO D8–28–802 OF 2006
KANG HWEE GEE J
29 JANUARY 2007

Civil Procedure — Jurisdiction — High Court of Malaya distinct from High Court in Sabah and Sarawak — Whether High Court of Malaya had jurisdiction to hear petition to wind up respondent company — Courts of Judicature Act 1964 s 23

Companies and Corporation — Winding up — Provisional liquidator — Appointment — Factors to be considered — Whether assets in dissipation — Balance of convenience

The respondent applied to strike out the petitioner's petition to wind up the respondent company via encl 17. Pursuant to s 218 of the Companies Act 1965, the petition was presented by the petitioner based on account of the respondent being unable to pay its debts. The application was based on grounds that the winding up petition was filed in the High Court of Malaya. The respondent company was not resident in Malaya but in Sarawak and has its registered and business address in Kuching. Therefore, the High Court of Malaya had no jurisdiction to hear a petition which should rightly be presented in the High Court of Sabah and Sarawak. The respondent's application was opposed by the petitioner on the ground that the respondent had committed itself in credit facility agreement to be bound by the jurisdiction of whichever High Court that the petitioner would decide to petition. There was also an application by the respondent to set aside an order obtained by the petitioner to appoint one David Wong, a Chartered Accountant and an approved liquidator as Official Receiver of the respondent company (encl 14). This application was opposed on grounds that there were no imminent threat/evidence of dissipation of assets and that a provisional liquidator had to be appointed. Issues for the court were: (i) as regards encl 7, whether both parties had consented to submit to the jurisdiction of both the High Courts (of Malaya and of Sabah and Sarawak); and (ii) as regards encl 14, whether there was evidence of dissipation of assets which warrant a provisional liquidator.

Held, allowing the application to set aside:

(1) Following the Federal Court case of *Fung Beng Tiat* and the interpretation of s 23, both parties had consented in writing to submit to the jurisdiction of

A both the High Courts (of Malaya and of Sabah & Sarawak) and that one High Court can accept jurisdiction of the other High Court (see paras 5–6).

(2) Applying the established principle cited by petitioner's counsel, the petitioner had satisfied the pre-requisite that the winding-up order was likely to be made. However, there was no evidence of dissipation of assets. The letter exhibited B merely showed an attempt on the part of the respondent to settle its debts not only with the petitioner but also with the creditors. The fact that the respondent had not submitted an audited account to the ROC as required was not under the circumstances of evidence of dissipation of assets to justify the appointment of an approved liquidator. Hence, the court should not make an C order to appoint Mr David Wong to act as the provisional liquidator (see paras 17–19).

[Bahasa Malaysia summary

D Responden telah memohon untuk pembatalan petisyen pempetisyen bagi menggulung syarikat responden melalui lampiran 17. Berikutan s 218 Akta Syarikat 1965, petisyen telah dikemukakan oleh pempetisyen berdasarkan kepada ketidakmampuan responden untuk membayar hutang-hutangnya. Permohonan adalah berdasarkan kepada penggulungan petisyen yang telah difailkan di Mahkamah Tinggi Malaya. Syarikat responden tidak bermastautin di Malaya tetapi di Sarawak E dan mempunyai alamat dan perniagaan berdaftarnya di Kuching. Oleh itu, Mahkamah Tinggi Malaya tidak mempunyai bidang kuasa untuk mendengar petisyen yang sepatutnya dikemukakan di Mahkamah Tinggi, Sabah dan Sarawak. Permohonan responden ditentang oleh pempetisyen berdasarkan penegasan bahawa responden telah mengkomitkan dirinya dalam kemudahan perjanjian kredit untuk F diikat melalui bidang kuasa sebarang Mahkamah Tinggi dimana pempetisyen berkeputusan untuk membuat petisyen. Terdapat juga permohonan oleh responden untuk mengetepikan satu perintah yang diperolehi oleh pempetisyen bagi melantik satu David Wong, akauntan bertauliah dan penyelesai sebagai Pegawai Penerima syarikat responden (lampiran 14). Permohonan ini telah ditentang berdasarkan kepada ketiadaan ugutan dan keterangan kehabisan aset dan juga bahawa seseorang G penyelesai perlu dilantik. Isu-isu untuk mahkamah adalah: (i) berkenaan lampiran 7, sama ada kedua-dua parti telah bersetuju untuk menyerah kepada bidang kuasa kedua-dua Mahkamah Tinggi (Malaya dan juga Sabah dan Sarawak); dan (ii) berkenaan lampiran 14 sama ada terdapat keterangan penghabisan aset yang memerlukan pegawai penyelesai.

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Diputuskan, membenarkan permohonan untuk penepian:

(1) Berikutan kes *Fung Beng Tiat v Marid Construction Co* [1996] 2 MLJ 413 dan interpretasi s 23, kedua-dua parti telah bersetuju dalam tulisan untuk I menyerah kepada bidang kuasa kedua-dua Mahkamah Tinggi (Malaya dan Sabah & Sarawak) dan satu Mahkamah Tinggi boleh menerima bidang kuasa Mahkamah Tinggi yang lain (lihat perenggan 5–6).

(2) Menggunakan prinsipal yang telah dipetik oleh pempetisyen, pempetisyen telah gagal untuk memuaskan mahkamah bahawa satu penggulungan perintah adalah perlu dibuat. Walaubagaimanapun, responden sedang menghabiskan harta-hartanya. Surat yang telah dieksibitkan hanya menunjukkan percubaan di pihak responden untuk menyelesaikan hutangnya dengan pempetisyen dan juga dengan penghutang-penghutang lain. Memandangkan responden tidak mengemukakan akaun yang telah diauditkan kepada Pendaftar Syarikat seperti yang diperlukan tidak berada dalam keadaan-keadaan keterangan pembuangan aset bagi memuaskan perlantikan pegawai penyelesai. Tidak ada sebarang tujuan kenapa mahkamah perlu membuat perintah bagi melantik David Wong untuk berlakon sebagai penyelesai. Petisyen perlu melalui proses yang biasa (lihat perenggan 17–19).]

Notes

For cases on jurisdiction of High Court of Malaya, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 4027–4028.

For cases on provisional liquidator, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1282–1283.

Cases referred to

Fung Beng Tiat v Marid Construction Co [1996] 2 MLJ 413 (refd)

HongKong and Shanghai Banking Corporation Ltd v Kemajuan Bersatu Enterprise Sdn Bhd [1992] 2 MLJ 370 (refd)

Pac Asian Services Pte Ltd v European Asian Bank AG [1989] 3 MLJ 385 (refd)

Legislation referred to

Companies Act 1965 s 231

Courts of Judicature Act 1964 s 23

Alex Chang (CH Lim) (Alex Chang & Co) for the petitioner.

Janice Yap (Ranjit Ooi & Robert Low) for the respondent.

Kang Hwee Gee J (delivering oral judgment immediately after submission):

ENCLOSURE 17

[1] This is an application by the respondent to strike out the petitioner's petition to wind up the respondent company.

[2] The petition was presented by the petitioner on 8 November 2006 pursuant to s 218 of the Companies Act 1965 on account of the respondent being unable to pay its debts.

[3] The application is based on the following grounds:

(1) This windingup petition has been filed in the High Court of Malaya. The respondent company is not resident in Malaya but in Sarawak and has its

registered and business address in Kuching. This court has no jurisdiction to hear a petition which should rightly be presented in the High Court of Sabah and Sarawak. It is trite that there are two High Courts of co-ordinate jurisdiction, High Court of Malaya and High Court of Sabah and Sarawak.

(2) This court therefore has no territorial authority to hear this petition (see Federal Court decision in *Fung Beng Tiat v Marid Construction Co* [1996] 2 MLJ 413 per Gopal Sri Ram JCA (coopted) at pp 420–421:

> We pause to observe that Abu Mansor J in *Dayasar Corp Sdn Bhd v CP Ng & Co Sdn Bhd* [1990] 1 MLJ 191 adopted the correct approach to the question of jurisdiction. Although that was a case which concerned corporate and not personal insolvency, the views there expressed are of relevance to the instant appeal. For present purposes, we find it sufficient to quote from the headnote of the report:
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> The respondent company was incorporated on 1 September 1982 and had its registered office in Kuching, Sarawak. The petitioner alleged that the respondent was indebted to the petitioner in the sum of $107,357.66 for the price of goods sold and delivered. On 5 September 1988, the petitioner served on the respondent the statutory notice pursuant to s 218 of the Companies Act 1965 but no payment was received. Hence the petitioner filed the petition to wind up.
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> Held, striking out the petition:
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> (1) The issue of which High Court has jurisdiction over a matter is determined by s 23 of the Courts of Judicature Act 1964. It is clear that the respondent, residing in Kuching would come under s 23(l)(b) of the Courts of Judicature Act 1964.
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> (2) While matters can be heard in any court of the courts of Malaya, it was not the intention of the legislature for any court in Malaya to assume jurisdiction of a matter arising in or which should be filed in a Borneo Court. Since the respondent is residing in Kuching, the matter should really be filed in the Borneo High Court, in particular Kuching.
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> (3) From the point of view of convenience, Kuching would be more convenient with the respondent residing there and the witnesses being there.
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> Finally, we refer to the treatment by the learned judge of the conduct of the debtor in relation to the issue of jurisdiction. In our judgments, the doctrine of submission to jurisdiction, which is really part and parcel of private international law applies to jurisdiction that a court has over a particular litigant and has nothing whatsoever to do with the territorial authority of a court. The expression 'jurisdiction' is one that takes its colour from its context, and, for that reason, great care must be taken in its use to the facts of a particular case.
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> The answer to the problem in the present case lies in the observation made by Mohd Azmi FCJ during argument that once it is recognized that what was in issue was territorial jurisdiction, then, there could arise no question of a submission. Jurisdiction in the sense in which it applies in the present case cannot be conferred by consent or waiver. The learned judge was quite wrong when he thought otherwise.

Submits: This case clearly illustrates that both the forum conveniens and jurisdiction lie in the High Court of Sabah and Sarawak and not the High Court of Malaya.

[4] The application is opposed by the petitioner on the following grounds: **A**

(1) The respondent had committed itself in credit facility agreement to be bound by the jurisdiction of whichever High Court that the petitioner would decide to petition (see encl 1 exh A pp 11 and 12 Cl 11):

> The company may at the company's absolute discretion initiate any action or legal proceedings in respect of the customer's obligations and liabilities herein in any court within Malaysia as the company deems fit. **B**

(2) The decision in *Fung Beng Tiat* has not dealt with s 23 of the Courts of Judicature Act 1964:

> 23. Civil jurisdiction-general. **C**
>
> (1) Subject to the limitations contained in Art 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:
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> (a) the cause of action arose, or
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> (b) the defendant or one of several defendants resides or has his place of business, or **D**
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> (c) the facts on which the proceedings are based exist or are alleged to have occurred, or
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> (d) any land the ownership of which is disputed is situated, **E**
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> within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.
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> (2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such other jurisdiction as may be vested in it by any written law in force within its local jurisdiction. **F**

REPLY BY THE RESPONDENT'S COUNSEL

(1) Section 23 of the Courts of Judicature Act 1964 is concerned only with local jurisdiction and not jurisdiction of the two High Courts. **G**

(2) The consent of the respondent even if proved would not override the provision of the law prohibiting a petition which should rightly be filed in the High Court of Sabah and Sarawak and not in the High Court of Malaya.

FINDINGS AND DECISION **H**

[5] The Federal Court in *Fung Beng Tiat* did not address the issue on whether a party who had consented to submit to the jurisdiction of both the High Courts (Malaya and of Sabah and Sarawak) as in this case can claim that the High Court in one jurisdiction cannot hear a case which should rightly be heard by the High Court in the other jurisdiction. **I**

[6] I would accept the submission of counsel for the petitioner that the correct interpretation of s 23 is to allow one High Court to accept jurisdiction 'of the other High Court' where the parties 'consent in writing'.

[7] It is clear that by cl 11, the parties had so consented.

[8] Application dismissed with costs.

ENCLOSURE 14

[9] This is an application by the respondent to set aside an order obtained by the petitioner to appoint Mr David Wong, a Chartered Accountant and Approved Liquidator in preference to the matter of course Official Receiver.

[10] The petitioner had obtained an order on the 13 December 2006 by an ex parte application pursuant to s 231 of the Companies Act 1965 supported by an affidavit of the finance manager Geeta a/p Balan (encl 3) which reads as follows:

1 I am the Finance Manager of the abovenamed plaintiff, a company duly incorporated under the Companies Act 1965 (hereinafter the 'CA65') and am duly authorised by the plaintiff to make this affidavit on its behalf.

2 Save as otherwise expressly stated, the facts contained herein are from my personal knowledge and/or from information supplied to me and/or from documents which I have access to.

3 I crave leave to refer to the following documents:

(3.1) the petition dated 8th November 2006;

(3.2) the affidavit verifying petition of Geeta a/p Balan affirmed on 9th November 2006 and I adopt the averments contained therein;

(3.3) the ex parte summons in chambers (provisional liquidator) filed herein;

(3.4) the ex parte summons in chambers (disposition of properties) filed herein;

(3.5) the affidavit in support (disposition of properties) of Geeta a/p Balan affirmed on even date and I adopt the averments contained therein.

THREAT OF DISSIPATION OF ASSETS

4 I aver that there is an imminent/immediate threat that the respondent ('the company') will dispose of its assets inter alia in the form of immovable/landed properties.

4.1 I aver that the company has inter alia a property known as Unit No 176-2-2 Kiara Park, Jalan Burhanuddin Helmi, Taman Tun Dr Ismail, 60000 Kuala Lumpur.

5 I aver that the company had vide its letters dated 28 July 2006 and 17 October 2006 clearly stated its intention to dispose of its properties.

6 I further aver that the company has failed to file their audited accounts with the Companies Commission of Malaysia formerly known as the Registrar of Companies ('the ROC') after the audited accounts for the year 1997.

6.1 A copy each of the said letters, the report on the company from the ROC dated 30 November 2006 and the statement of particulars to be lodged with charge for

Urethane Technologies Sdn Bhd dated 24 June 1999 are now produced, shown to me and annexed herewith and marked collectively as exh 'GAB-2'.

FULL AND FRANK DISCLOSURE

7 I aver that your petitioner has disclosed all the material information and documents in its possession which in his opinion is relevant to the above matter.

LIQUIDATORS: OFFICERS OF THE COURT

8 I have been advised by the solicitors for your petitioner, Messrs Alex Chang & Co ('ACC') that liquidators are officers of the court subject to the supervision of the court and they have to act fairly without fear or favour in carrying on the business of the company so far as is necessary for the beneficial winding up of the company.

8.1 As there is an imminent/immediate threat of the dissipation of assets by the company the appointment of an officer of the court for the above purpose is just and equitable in the circumstances.

LIKELIHOOD OF THE GRANTING OF AN ORDER FOR WINDING UP

9 I have been advised by ACC and verily believe that there is good prima facie evidence as stated in the petition and the affidavit verifying petition that the company will be wound up, the grounds are inter alia as follows:

9.1 The company vide its letter dated 17th October 2006, inter alia admitted that the outstanding principal sum due and owing to your petitioner is RM564,384 and requested for a waiver of the finance charges;

9.2 Although the company has retained the services of Messrs HC Lee & Partners, they have not raised any dispute as to the claim of your petitioner. I aver that therefore there is no dispute on the sum due and owing to your petitioner and the company has admitted that it is not in a position to pay its debts.

APPLICATION MADE EX PARTE/NO NOTICE GIVEN

10 I aver that this application must be made ex parte as the company, if unrestrained, is at liberty to dispose of their properties pending the hearing of the application inter partes.

10.1 Wherefore I aver that no notice was given to the company or its solicitors Messrs HC Lee & Partners Advocates.

UNDERTAKING AS TO DAMAGES

11 I aver that the petitioner do undertake to pay whatever damages the company may suffer as a result of an order appointing the provisional liquidators.

12 Wherefore I pray for an order in terms of the summons in chambers filed herein

[11] The grounds for opposing are as follows:

(1) There is no imminent threat that the respondent would be dissipating its assets that a provisional liquidator had to be appointed. There is no evidence of dissipation. The exchange of correspondence merely shows parties were in

communication in respect to the alleged debt. All the communications were in response to the petitioner's demand for payment. I say this however without concession that these letters are to be construed as an admission of debt by the respondent. I say this and I rely on these letters to show merely that parties were in communication. This by itself does not justify the petitioner rushing to this honourable court to seek a measure so drastic where there was never any basis in the first place to justify the application being ex parte. There were no furtive or secretive measures which have allegedly been undertaken by the respondent to dissipate the assets.

(2) With respect to the allegation concerning the auditor's account, this is an issue which does not show dissipation of assets. The net result is that there is absolutely no evidence before this honourable court to justify the appointment of a provisional liquidator more so on an ex parte basis. If it were so, then there would have been more reason for the respondent to be in communication with the petitioner at all times.

REPLY BY COUNSEL FOR THE PETITIONER

[12] According to the affidavit (encl 3 — exh 'GAB-2') the letter that was written with respect to the intention to dispose of the properties is clear evidence of dissipation because not all the monies from the proposed sale would be paid to the petitioner in preference to the petitioner.

[13] They wrote another letter on 17 October 2006 downgrading their commitment to pay the petitioner from RM250,000 to RM100,000. They are seeking preference to pay the creditors.

[14] No statutory account (see *Pac Asian Services Pte Ltd v European Asian Bank AG* [1989] 3 MLJ 385 at p 389 per Wee Chong Jin CJ):

> The court then went on to consider five matters. These included the assertion that money was being siphoned off and the fact that the company made no attempt to deny this assertion; the fact that there were no audited balance sheets and that the company refused to give information; and the consideration that some urgent action in relation to the preservation of assets was needed but none taken. We are therefore of the view that, in the circumstances of our case, the bank must first show a good prima facie case of insolvency on the company's part, and then adduce other evidence to justify the appointment of provisional liquidators.
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> There is one further point before we proceed to examine the affidavit of Christopher John Weir filed on 23 January 1986 ('the first Weir affidavit'). Where an ex parte application is made for a Mareva injunction, it is of the first importance that the plaintiff should make full and frank disclosure of all material facts (*Bank Mellat v Nikpour* [1982] Com LR 158). In The *'Niedersachsen'* [1983] 2 Lloyds Rep 600 at p 611, Mustill J had this to say:
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> Plaintiffs who seek Mareva relief will do well to bear in mind that the same obligations of candour apply to these proceedings, as to any other form of ex parte application.

> We can find no objection in principle why the same obligation should not be imposed on the bank in its ex parte application for appointment of provisional liquidators. Bearing all these principles in mind, was the first Weir affidavit one capable of supporting the ex parte application? The affidavit stated that the statutory demand of 21 December 1985 was served on the company by hand at its registered office. It also annexed a copy of the petition filed on 23 January 1986. These were obviously done to establish a prima facie case of the company's insolvency. But, as we have already seen, the demand was admittedly never served at the registered office, and the petition, in so far as it was founded on s 254(1)(e) read with s 254(2)(a), was defective. The alternative assertion, relying on s 254(2)(c), was similarly defective in that it was a bare allegation. Although the amended petition may have rectified this defect, it remains that there was a defective petition before Chua J on 24 January 1986.

[15] As for the authority when court can act under s 231 to order an approved liquidator (see *Hongkong and Shanghai Banking Corporation Ltd v Kemajuan Bersatu Enterprise Sdn Bhd* [1992] 2 MLJ 370 per VC George J at Held (1):

> Section 231 of the Act confers on the court an unfettered discretionary power but that power must be exercised in a proper judicial manner. In the proper exercise of its discretion the court must be satisfied that ultimately the court is likely to make the winding-up orders sought in the petition.

And at p 375G–376:

> The power to appoint a provisional liquidator is given to the court by s 231 of the Companies Act 1965. It can be exercised at any time after the presentation of a winding-up petition and before the making of a winding-up order. Rule 35(1) of the Companies (Winding-Up) Rules 1972 elaborates on the power – the application for the appointment has to be made by 'any creditor or contributory' who should prove 'sufficient ground' for the appointment by affidavit. Creditor is defined in r 2 to include a corporation or a firm. No distinction is made between a secured or unsecured creditor. In fact no qualification is made in respect of 'any creditor'.
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> As the equivalent provisions in England and in Australia are in pari materia with our provisions, it is relevant to see how the courts in those jurisdictions have approached these provisions.
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> Now, it is to be observed that the discretionary power given by s 231 is in quite general terms. Sir Robert Megarry V-C could see no hint in the English equivalent section (s 238 of the 1948 Act) that the section is to be restricted to only where the company is obviously insolvent or where the assets are in jeopardy (see *Re Highfield Commodities Ltd* [1984] 3 All ER 884; [1985] 1 WLR 149 (folld) at p 893b). The section confers on the court an unfettered discretionary power but as the learned Vice-Chancellor puts it 'that power must obviously be exercised in a proper judicial manner'. The Australian courts have taken the same obvious view (see for instance, *Re McLennan Holdings Pty Ltd* [1983] 7 ACLR 732 at p 737 where *Pitt v Bachmann* [1980] 5 ACLR 282 (refd) and *Re ML Industries Pty Ltd* [1981] 5 ACLR 769 (refd) were followed in respect of the holding that after the due presentation of a petition to wind up which discloses proper grounds for winding up, the discretion to appoint a provisional liquidator is not limited.
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> The 'sufficient ground' for the appointment required by the rule has been the subject of judicial discussion both in Australia and in England. The circumstances in which the courts have made the orders vary infinitely. I think it is useful to quote the passage from the 1975

judgment of Bright J of the Supreme Court of S Australia in *Re Club Mediterranean Pty Ltd* [1975] 11 SASR 481 (refd) at p 484 that *McPherson on The Law of Company Liquidation* (3rd Ed) quotes at pp 100 and 101:

> Where the petitioning creditor makes the application and the company opposes it, the court must come to a conclusion as to the degree of urgency and of need established by the petitioning creditor and the balance of convenience. The circumstances will vary. Sometimes the company may be continuing to trade at a loss or to incur further liabilities. Sometimes assets may require to be protected from dissipation or from seizure or encumbrance. Sometimes the right of the company to assets or the right to exercise an option, enforce a contract, reject a claim or otherwise to act for the apparent benefit of the company may be in issue and the issue may need to be resolved or carried forward or rights may need to be protected as a matter of urgency. Sometimes the company may be paralysed by a dispute between shareholders or directors, or by some form of interim court order. Sometimes there may be a conflict of interest between a director or principal officer of the company itself with regard to some right of property, and that conflict may render it difficult for the company's rights to receive proper protection.

As has been seen, in deciding whether to appoint a provisional liquidator the courts have repeatedly stressed that they have a wide discretion. Some examples are given by McPherson at p 101:

> Accordingly, provisional liquidators have been appointed: to investigate the affairs of the company in its own right or in its capacity as a trustee, to enable the company to complete current contracts, to enter into new contracts and execute the relevant documents; and to represent the company in legal proceedings.

Now the appointment of a provisional liquidator has been described as having the effect of paralysing the company – see McPherson at p 99. It is for this reason that it has been judicially established that on the proper exercise of its discretion the court must be satisfied that ultimately the court is likely to make the winding-up orders sought in the petition which has been described as the 'threshold test' in *Re Qintex Ltd (No 3)* [1990] 2 ACSR 627 (refd) at p 638. In *Re McLennan Holdings Pty Ltd* [1983] 7 ACLR 732 (refd) at p 738, Master Lee said:

> Whilst the ultimate fate of the petition must be left to the court finally hearing the matter, a provisional liquidator will not usually be appointed unless it appears in the material that a winding-up order is likely... This presupposes that there should be adequate evidence adduced on an application for appointment of a provisional liquidator to show that a winding up is, in the absence of material to the contrary, likely.

[16] Winding up order is most probable.

FINDINGS AND DECISION

[17] Applying the established principle cited by counsel for the petitioner it is clear to me that the petitioner had satisfied the pre-requisite that winding-up order is likely to be made. However, it has failed to satisfy this court that the respondent is

dissipating its assets. The letter exhibited merely shows an attempt on the part of the respondent to settle its debt not only with the petitioner but with other creditors.

[18] The fact that the respondent had not submitted an audited account to the ROC as required is not under the circumstances evidence of dissipation of assets to justify the appointment of an approved liquidator.

[19] There is no reason why this court should make an order to appoint Mr David Wong to act as the provisional liquidator. The petition should follow the normal process. Application to set aside is allowed with costs.

Application to set aside allowed.

Reported by Peter Ling